UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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HARINDER JEET SINGH, :
Plaintiff :

-against- :

U.S. SECURITY ASSOCIATES, INC., :
Defendant :

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MEMORANDUM DECISION 03 Civ.2059(FM)

FRANK MAAS, United States Magistrate Judge.

I. Introduction

In this employment discrimination action, pro se plaintiff Harinder Jeet Singh ("Singh") alleges that his former employer, U.S. Security Associates, Inc. ("USSA"), denied him a timely promotion, subjected him to unequal terms and conditions of employment and a hostile work environment, and retaliated against him for filing an EEOC complaint, in violation of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. § 2000e, et seq. Singh also has brought a state law claim of intentional infliction of emotional distress.

USSA has now moved for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, and Singh has cross-moved to amend his complaint, pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, to add claims of retaliatory discharge, conspiracy to discriminate, and harassment against USSA and other proposed defendants. Previously, in July 2003, the parties consented to my exercise of jurisdiction over this matter for all purposes pursuant to 28 U.S.C. § 636(c).

(See Docket No.14). Pursuant to that authority, for the reasons set forth below, Singh's motion to amend is denied, USSA's motion for summary judgment is granted, and the clerk of the Court is requested to close this case.

II. Facts

Unless otherwise noted, the following facts are set forth in the light most favorable to Singh.*

A. Parties

Singh was born in 1963 in India. (Singh Dep. 9-10). He emigrated to the United States more than fifteen years ago, and has become a United States citizen. (Id. At 10, 12). He describes his national origin and race as Indian, and his color as "wheatish." (Id. At 88-89).

In late 1998, Singh began his employment with a predecessor of USSA, known as D.B. Kelly Associates ("DBK"). (Singh Dep. 11,23). USSA provides security services to office buildings and other facilities. (Exs.B (Decl. Of David Morales, dated Jan. 18, 2004 ("Morales Decl.")),¶ 5, C (Decl. Of Lamonte Alexander Lundy, dated Jan. 16, 2004 ("Lundy decl.")),¶ 4).

"Ex." Followed by a letter refers to the exhibits annexed to the Certification of Michelle S. Harkavy, Esq., dated Jan. 22, 2004 (Docket No.29); "Ex." Followed by a number refers to the exhibits annexed to Singh's Motion in Opposition (Docket No. 31); "Singh Dep." Refers to the deposition of Singh, taken on Oct. 16, 2003 (Ex. 46); "E" refers to the 26 page errata sheet that Singh prepared after he was sent the transcript of his deposition Singh's deposition errata sheet contains frequent entries that his testimony was either "wrongly described," "wrongly added," or both. (See Ex. 47). In many instances, he does not indicate what testimony, if any, allegedly was given instead of that which appears in the transcript. (Id.). Singh explains that these errata sheets represent "[a]ll real facts which were given at the deposition and [that] the court reporter did not include." (Affidavit of Harinder Jeet Singh, sworn to on Feb. 12, 2004 ("Singh Aff."), at 38). He also accuses the court reporter of transcribing his deposition "in a fraudulent and falsifying manner to help the defendant." (Id.). Although these are dubious propositions at best, his efforts to modify the substance of the deposition transcript do not appear to affect the outcome of his case in any respect.

B. Fire Safety Directors

Pursuant to local law 5 of 1973, high rise office towers in New York City are required to have at least one fire safety director ("FSD") or deputy FSD assigned to their premises. See N.Y.C. Admin. Code § 4267(2)(a),(b). In addition, when the building is occupied and an FSD or deputy FSD is not on duty, at least one knowledgeable employee, designated as a building evacuation supervisor ("BES"), must be present on site. Id.§ (c).**

FSDs were created because Fire Department personnel responding to emergencies and fires in high rise buildings often found that no one at the building was knowledgeable about the building's construction, location of sprinklers, stairways, elevator and mechanical systems operation, etc. Leading to confusion, panic, unneeded evacuations and unnecessary injuries and fatalities. Creation of the position centered

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** As presently codified, the relevant provisions of Local Law 5 are as follows:

2. Fire Safety Director, deputy fire safety director, and building evacuation supervisor:

(a) One employee shall be designated as fire safety director and one or more employees as deputy fire safety director. Such employees shall each have a certificate of fitness, in accordance with the requirements of the [fire] commissioner, qualifying him or her to conduct fire drills, evacuations and related activities such as organizing, training and supervising a fire brigade, and designating and training fire wardens and deputy fire war.den In the absence of a fire director, when a fire safety director is required to be on duty in the building, such deputy fire safety director shall act as fire safety director.

(b) During normal working or business hours, when the building is occupied by more than one hundred persons above or below the street level or more than a total of five hundred persons in the entire building, there shall be at least one person on duty in the building as fire safety director with the required certificate of fitness. During fire emergencies, the primary responsibility of the fire safety director shall be the supervision and manning of a fire command station and the director and execution of the evacuation as provided in the fire safety plan. Such activities shall be subject to fire department control. (continued..)

knowledge and responsibility on one individual who could order evacuations, liaison with the FDNY in emergencies situations, and protect life and property. (Frequently Asked Questions About NYC Fire Safety Directors, available at http://nyail.com/fsd/what_is.html (last visited Jan. 23, 2005)). In practice, it is common for a building to have more than one FSD. (Ex.E (Dep. Of Fitzroy Benjamin, taken on Nov. 13, 2003 ("Benjamin Dep.")), at 14).

To become an FSD, a building employee must complete a twenty-hour course approved by the Fire Department and take both written and onsite examinations administered by the Fire Department. After completing the course and taking a written exam, a candidate receives a Certificate of Completion ("COC"). An FSD applicant who successfully completes the onsite exam receives a Certificate of Fitness ("COF") which is valid only for the building where the onsite test was conducted.(See Exs. J,K)

C. Singh's Employment

On or about September 23, 1998, David Morales ("Morales"), USSA's Operations Manager, acting on behalf of DBK, hired Singh as a security guard. (Morales Decl. ¶ 6). Thereafter, DBK became a division of USSA. (Singh

(c) (continued...) At all other times when there are occupants in the building, and there is no fire safety director on duty in the building, there shall be at least one employee on duty in the building designated as building evacuation supervisor["BES"]

Such employee shall be capable of directing the evacuation of the occupants as provided for in the fire safety plan. During fire emergencies, the primary responsibility of the [BES] shall be the manning of a fire command station and the direction and execution of the evacuation as provided in the fire safety plan. His or her training and related activities shall be under the direction of the fire safety director in accordance with the requirements of the commissioner and the fire safety plan. Such activities shall be subject to fire department control.

N.Y.C. Admin. Code § 27-4267(2)(a)-(c).

Dep. 22-23; Morales Decl.¶¶ 4,6). Singh's first assignment was at 55 Water Street in lower Manhattan. (See Singh Dep. 23-24). On about December 31, 1999, after Singh advised Morales and Lamonte Alexander Lundy ("Lundy") USSA's New York City branch manager, that he was unhappy with his assignment, USSA transferred Singh to a building at 75 Varick Street ("75 Varick") now known as 1 Hudson Square. (Id. At 24-28, 31; Lundy Decl.¶ 3; USSA Rule 56.1 Stmt.¶ 8). 75 Varick is one of several "Trinity Church buildings." (See Singh Dep. 28). The USSA security employees working at the Trinity Church buildings are covered by a Collective Bargaining Agreement, originally entered into between DBK and Local 32B-32J of the Service Employees International Union AFL-CIO ("Union"), and an Independent Security Contractors' Agreement incorporated therein by reference (together, the "Union Agreement"). (See Ex. D; USSA's Rule 56.1 Stmt. ¶ 3).

Insofar as relevant, the Union Agreement states as Follows:

> REPLACEMENTS AND PROMOTIONS-In filling vacancies or newly created positions in the bargaining unit, preference shall be given to those employees already on the job, based upon the employee' seniority, but training, ability and appearance, shall also be considered...If a present employee cannot fill the job vacancy,[USSA] must fill the vacancy in accordance with the other terms of this Agreement.....
>
> NO DISCRIMINATION- There shall be no discrimination against any present or future employee by reason of race, creed, color, age,

With the COC, a building employee may work as an FSD at the building where he is employed pending the onsite test, which must be taken within one year. (Benjamin Dep. 19).

disability of an individual in accordance with applicable law, national origin, sex or union membership. (Ex. D Attach., XIV, §§ 8, 21).

On November 20, 2000, Singh filed a "Charge of Discrimination" ("First EEOC Complaint") with the Equal Employment Opportunity Commission ("EEOC"), in which he claimed that USSA had discriminated against him based on his race, color and national origin. (Ex. 1). More specifically, Singh alleged that his regular shift at 75 Varick had been given to more junior employees because they were Black or Hispanic. (Id.; Singh Dep. 121-24). As a result of the shift change, Singh was given fewer hours to work than the more junior employees. (id.)

Prior to the filing of the First EEOC Complaint, Singh also complained to the Union, which filed a grievance alleging that DBK had harassed Singh by improperly changing his shift. (Ex. 1 at 2). As a result, even before receiving Singh's First EEOC Complaint, USSA realized its error and restored him to his original shift. (Morales Decl.¶10). Thereafter, on January 17, 2001, the EEOC case was resolved pursuant to an agreement which provided that USSA, d/b/a DBK, would pay Singh the equivalent of three and one-half day's pay and would not discriminate or retaliate against him. (See Ex.2).

C. Singh's Attempt to Become an FSD

In an effort to improve his salary, Singh sought to become an FSD at 75 Varick. After taking the required course, Singh received his COC on January 31, 2002. (Singh Dep. 45-47; Ex.P). At the time, 75 Varick had two FSDs and there were no other FSD openings there.(Id. At 49-50). Nevertheless, Singh informed Lundy that

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the settlement agreement further provided that it could "be used as evidence in a subsequent proceeding in which any of the parties allege a breach of the[e] agreement." (Id.).